



U.S. CENTRAL

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Via Electronic Mail and U.S. Mail

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Board of Governors of the
Federal Reserve System
Washington, D.C. 20580

Department of the Treasury
Office of Critical Infrastructure
Protection and Compliance Policy
Main Treasury Building–Room 1327
Washington, D.C. 20220

Re: Proposed Rules Implementing Unlawful Internet Gambling
Enforcement Act - FRB Docket No. R-1298; Treas. Docket No.
Treas-DO-2007-0015

Ladies and Gentlemen:

The Board of Governors of the Federal Reserve System and the Department of Treasury (collectively, the “Agencies”) have proposed rules (the “Proposed Rules”) to implement applicable provisions of the Unlawful Internet Gambling Enforcement Act of 2006 (the “Act”). U.S. Central Federal Credit Union (“U.S. Central”) appreciates this opportunity to comment on the Proposed Rules.

U.S. Central is a federally chartered corporate credit union directly serving its member corporate credit unions, who in turn serve the needs of their approximately 8500 natural person credit union members. U.S. Central regularly engages in ACH transactions and wire transfer system transactions, and its majority-owned subsidiary, Corporate Network eCom, LLC (“eCom”), provides electronic bill payment services to U.S. Central’s members, who in turn offer those services to their natural person credit union members. Those natural person credit unions provide the services to their members. Accordingly, U.S. Central would be affected by the Proposed Rules.

U.S. Central has a general comment on the Proposed Rules, as well as specific comments on the applicability of the Proposed Rules to certain of the designated payment systems in which U.S. Central is involved.

General Comment

U.S. Central is concerned about the lack of specificity contained in the Proposed Rules as to what constitutes a “restricted transaction.” In particular, U.S. Central is concerned about the ability of entities covered by the provisions of the Proposed Rules to determine whether or not any specific transaction involves “unlawful Internet gambling.” By defining “unlawful Internet gambling” as “a bet or wager [via the] Internet where such bet or wager is unlawful under any applicable Federal or State law. . .” the Agencies are providing little guidance to affected depository institutions and payment system participants. U.S. Central recognizes the difficulty the Agencies face in trying to provide greater specificity when Congress itself acknowledges the existing uncertainty in this area.¹ However, the inability to easily distinguish between Internet gambling transactions that are lawful and those that are unlawful places financial transaction providers with a difficult choice. Because of the difficulty of determining what Internet gambling transactions are lawful, it is likely that depository institutions will simply choose to refuse to do business with persons who engage in Internet gambling transactions. This result would be inconsistent with Congressional direction that the Agencies “ensure that transactions in connection with any activity excluded from the definition of unlawful Internet gambling. . . are not blocked or otherwise prevented or prohibited by the proposed regulations.”²

In order to provide greater certainty to financial transaction providers, U.S. Central believes that the Agencies should develop and maintain a list of businesses that they have determined are engaged in unlawful Internet gambling. Financial transaction providers could then check the list to determine whether a transaction may involve an entity that is engaged in the business of unlawful Internet gambling. Such a list would facilitate the ability of financial transaction providers to identify transactions that should be blocked. While U.S. Central recognizes the difficulty incumbent in developing such a list, we believe that the benefits far outweigh the disadvantages. This approach has been very successful in connection with the Office of Foreign Asset Control’s list of prohibited persons. Financial institutions have developed procedures to check that payment transactions do not involve prohibited persons. We believe that adopting a similar strategy for the Agencies’ regulations under the Act would likewise be very successful. By having a list of businesses identified as engaging in unlawful Internet gambling readily available, financial transaction providers would be in a better position to reject transactions and account relationships involving such entities. To ensure fairness, the Agencies could provide businesses that are on the list with the ability to demonstrate that they are not engaged in unlawful Internet gambling.

Specific Designated Payment Systems

U.S. Central’s comments are limited to the three payment systems described above: ACH system, wire transfer system and money transmitting businesses. Because the comments on

¹ See 72 *Fed. Reg.* at 56681, fn. 1 (“This subchapter is not intended to resolve any existing disagreement over how to interpret the relationship between the Interstate Horseracing Act and other Federal statutes.”).

² 31 U.S.C. § 5364(b)(4).

ACH and wire transfer systems are substantially identical, they are presented together, followed by the money transmitting businesses comments.

1. ACH and Wire Transfer Systems

A. Scope of Exemptions. Section II.C of the Supplementary Information section (the “Supplementary Section”) of the Proposed Rules states that the Proposed Rules are structured to exempt from their requirements all participants in the ACH systems except for the participant that possesses the customer relationship with the Internet gambling business or engages in certain cross-border transactions. Section II.C.1 of the Supplementary Section states that the ODFI in an ACH debit transaction and the RDFI in an ACH credit transaction are the institutions that typically have a pre-existing relationship with the customer receiving the proceeds of the ACH transaction. Accordingly, the Proposed Rules provide an exemption for the ACH system operator as well as RDFI in an ACH debit transaction and the ODFI in an ACH credit transaction.

The scope of these exemptions does not appear to fully implement the stated intent of the Agencies. Setting aside the cross-border transaction issue, if the Proposed Rules are intended to impose requirements only on participants that possess the customer relationship with the Internet gambling business, then the Agencies should exempt not only the ODFI in an ACH debit transaction and the RDFI in an ACH credit transaction, but also those participants that act as third party processors and which do not have a customer relationship with the originator or the receiver, such as a servicer on behalf of the ODFI or RDFI. Limiting the exemption in the manner the Agencies do will result in the Proposed Rules being too broad and covering financial transaction providers that do not have any relationship with the gambling business. Accordingly, U.S. Central requests that the Agencies exempt third party processors and other servicers that do not have a customer relationship with ODFIs and RDFIs.

Section __.4(c) of the Proposed Rules exempts the originator’s bank and intermediary banks participating in a wire transfer system from the requirements of the Proposed Rules. U.S. Central agrees with the Agencies that these exemptions are appropriate for the reasons given by the Agencies.

B. Effective Date of Final Regulations. The Agencies ask whether it is reasonable to have the Proposed Rules become effective six months after the joint final rules are published.

U.S. Central does not believe that six months is sufficient time for financial transaction providers to implement the policies and procedures that will be needed to comply with the final rules. The Proposed Rules require financial transaction providers to perform comprehensive reviews of their operations of the designated payment systems to determine the appropriate modifications required by the final rules. This is especially true for financial institutions that participate in cross-border transactions as gateway operators or as the first collecting bank for foreign correspondent banks. Moreover, it will likely take more than six months for

designated payment systems to develop and implement policies and procedures that are designed to identify and block restricted transactions such that participants can rely upon them as provided in § __.5(b)(1) of the Proposed Rules. U.S. Central believes that it is more realistic to make the final rules effective 12 months or more after they are adopted.

C. Due Diligence Requirements. The Agencies have requested comment as to the appropriateness of participants incorporating into their existing account-opening procedures the due diligence provisions of the Proposed Rules. U.S. Central supports this provision. U.S. Central currently maintains and applies procedures to review each new member of U.S. Central and to review existing members on a periodic basis. U.S. Central also supports including in the due diligence provisions of the Proposed Rules a provision requiring each participant to confirm the nature of its members business.

D. Policy and Procedure Monitoring Requirements. The Proposed Rules do not include ongoing monitoring and testing within the examples of the policies and procedures for either ACH systems or wire transfer systems. U.S. Central agrees with this position. As the Agencies indicated in the notice, neither ACH systems nor wire transfer systems have sufficient functionality to analyze patterns of specific payments being processed through the system, and that their nature as open, universal systems through which payments may be made to businesses whether or not they sign up to participate in the system renders such ongoing monitoring and testing of little or no value.

2. *Money Transmitting Businesses*

As noted above, eCom is a majority-owned subsidiary of U.S. Central that provides electronic bill payment services to U.S. Central's members, who in turn offer those services to their natural person credit union members. Those natural person credit unions then provide the services to their members. U.S. Central believes that bill payment services structured in the manner in which eCom is structured should be exempted from the final rules because they do not have customer relationships with payers or payees. They are simply third party service providers to financial institutions who offer bill payment services to customers.

In general eCom's electronic bill payment services, like those offered by other bill payment providers, are structured as follows: A member of a natural person credit union schedules a payment through the member's natural person credit union's web site. That payment information is sent by the credit union to its corporate credit union, and from the corporate credit union to eCom. eCom then forwards the payment information to its third party processor (the "Third Party Processor"). The Third Party Processor determines whether or not it has operational capabilities that would enable the Third Party Processor to send an electronic payment to the designated payee. If so, the Third Party Processor sends the payment electronically by means of originating an ACH credit or through a wire transfer to the third party. If not, the Third Party Processor sends the payment to the payee in the form of

a paper check. This arrangement enables customers of financial institutions that offer these bill payment services to make payments to any business or person.

The Agencies' indicate in the Supplementary Section that the Proposed Rules place responsibility for compliance on the participant that has a customer relationship with the Internet gambling business. The Agencies' *Federal Register* notice states the following: "The Agencies are proposing to exempt all participants in the ACH systems, check collection systems, and wire transfer systems, except for the participant that possesses the customer relationship with the Internet gambling business [except for certain cross-border transactions]."³ The Agencies go on to state: "Moreover, as a general matter, a consumer can make payment by check, ACH, or wire transfer to any business with an account at a depository institution. This is in contrast to card systems and money transmitting businesses, in which consumers can make direct payments only to those businesses that have explicitly agreed to participate in those payment systems."⁴

As noted above, bill payment services such as eCom do not have customer relationships with the entities being paid with the payments processed through eCom. eCom also does not have customer relationships with the consumers that request the bill payment. eCom's relationship is with its member corporate credit unions, which offer eCom facilities to their respective natural person credit union members. Although a consumer can make a payment to any payee through the bill payment services, the means used by eCom to make the payment to payees (ACH, wire transfer or check), are indistinguishable from the payment methods exempted under the Proposed Rules. As is the case with ACH, wire and check payment systems, the Proposed Rules should impose the compliance requirement on the financial transaction provider that deals with the person receiving the proceeds of the unlawful Internet gambling transaction. This would make the Proposed Rules consistent among these virtually identical payment systems. In this regard, imposing a compliance requirement on bill payment providers such as eCom would duplicate the efforts of depository institutions that have customer relationships with, and maintain accounts for, payers and payees. Because certain of these institutions will be covered by the Proposed Rules (e.g., originators of ACH debits and receivers of ACH credits), policies and procedures should already be in place to identify and block restricted transactions.

Moreover, bill payment services such as eCom are readily distinguishable from the money transfer businesses identified in the Proposed Rules. In those systems, the money transmitter deals directly with payers and payees and establishes accounts for such entities which it debits and/or credits for the proceeds of transactions. Because of the similarities between eCom's operations and those of the exempted participants in the ACH systems, check collection systems and wire transfer systems, U.S. Central requests that the final rules expressly clarify that the exemptions also apply to bill payment services such as eCom's that are structured in a manner that do not result in account relationships being established by the biller with payers and payees.

³ 72 *Fed. Reg.* at 56685.

⁴ *Id.*

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U.S. Central appreciates the efforts of the Agencies in drafting the Proposed Rules. We recognize that there are numerous issues involved in creating regulations that reach the many entities involved in the various designated payment systems. Thank you for providing U.S. Central this opportunity to express our views on this important matter.

Respectfully,



Francis Lee
President/CEO

cc: Kent Buckham, Director OCCU, NCUA
Bruce Bakke, Corporate Field Supervisor, NCUA
Russell Moore, Capital Markets Specialist, NCUA